

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	15-CR-517(WFK)
	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	November 17, 2021
ALI SALEH,	:	12:00 p.m.
	:	
Defendant.	:	

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TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE WILLIAM F. KUNTZ, II
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S:

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BY: MICHAEL BACHRACH, ESQ.
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Proceedings recorded by computerized stenography. Transcript
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1 THE COURTROOM DEPUTY: United States District Court
2 for the Eastern District is now open for the transaction of
3 all business which may come before it. The Honorable William
4 F. Kuntz, II presiding.

5 Criminal cause for a sentencing 15-CR-517, USA
6 versus Ali Saleh.

7 Counsel, please state your appearances for the
8 record, starting with the Government.

9 MS. KOMATIREDDY: Good morning, Your Honor. Saritha
10 Komatirredy for the United States. I'm joined by my
11 co-counsel AUSA Alexander Mindlin, also seated at the table is
12 counsel for the parallel matter, AUSA Doug Pravda.

13 Behind us are case agents, Special Agents Brent
14 Newman and William Slattery of the FBI.

15 THE COURT: Good afternoon. Sit down.

16 MR. RICCO: Good morning, Your Honor. Anthony
17 Ricco. Last name R-I-C-C-O. One of the three lawyers for Mr.
18 Ali Saleh. Good afternoon.

19 MR. BACHRACH: Good afternoon, Your Honor. Michael
20 Bachrach also for Ali Saleh.

21 MR. ZISSOU: Also appearing, Steve Zissou,
22 Z-I-S-S-O-U. Good to see you again, Your Honor.

23 THE COURT: Defendant is present. Sit down.

24 The Court will now proceed in separate and
25 successive proceedings as required by Part 3D of the

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1 sentencing guidelines to prevent multiple punishments for
2 substantially identical conduct.

3 This Court will now sentence the defendant, Ali
4 Saleh, in Docket Number 15-CR-517.

5 The defendant pled guilty to attempting to provide
6 material support to a foreign terrorist organization in
7 violation of Title 18, U.S.C., Section 2339B(a)(1).

8 One sentence is pronounced in this case, this Court
9 will then adjourn this proceeding immediately to proceed to
10 sentencing the defendant in case docket 18-CR-468.

11 Counsel for the Government, are you ready to
12 proceed?

13 MS. KOMATIREDDY: Yes, Your Honor.

14 THE COURT: Defense counsel, are you ready to
15 proceed?

16 MR. RICCO: Yes, sir.

17 THE COURT: Probation, are you ready to proceed?

18 THE PROBATION OFFICER: Yes, Your Honor.

19 THE COURT: Mr. Saleh, you and your counsel have had
20 ample opportunity to review carefully and to discuss your
21 revised pre-sentence investigation report filed on December
22 17th of 2019, its first addendum filed on November 4 of 2021
23 and its second addendum filed on November 15 of 2021.

24 You and your counsel have also had an opportunity
25 review carefully and have, in fact, reviewed carefully the

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1 following documents: The Complaint filed on September 16,
2 2015, the superseding indictment filed on February 11, 2016,
3 the plea agreement dated July 24, 2018, defense counsel's
4 sentencing memorandum and attached exhibits filed on November
5 12 of 2021, the Government's sentencing memorandum filed on
6 October 22nd of 2021.

7 Are there any additional documents that either
8 counsel wishes to call to the Court's particular attention at
9 this time? From the Government?

10 MS. KOMATIREDDY: No, Your Honor. Thank you.

11 THE COURT: Probation?

12 THE PROBATION OFFICER: No, Your Honor.

13 THE COURT: Defense counsel?

14 MR. RICCO: No, sir.

15 THE COURT: Mr. Saleh, you have the right to address
16 this Court before I impose sentence. I will give you the
17 opportunity to do so in a few minutes, and at that time, say
18 anything you think appropriate before I finalize my judgment
19 in this case.

20 If you are not satisfied with your counsel's
21 representations and/or if you believe you have not received
22 the effective assistance of counsel, you may raise a claim of
23 ineffective assistance of counsel at an appropriate time and
24 in an appropriate forum.

25 On July 24, 2018, the defendant pled guilty to

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1 Counts Two and Three of the superseding indictment charging
2 the defendant with attempting to provide material support to a
3 foreign terrorist organization, specifically, the defendant
4 swore an oath of allegiance to ISIS, one of the preeminent
5 terrorist threats to the United States of America in the world
6 today, responsible for more deaths than any other terrorist or
7 extremist group over the past several years. At the time of
8 the defendant's offense, ISIS was pursuing the objective of
9 establishing an Islamic State, or caliphate, based in the
10 Middle East. At the time of the defendant's offense, ISIS
11 routinely carried out killings, murders, and deliberate
12 targeting of civilians, mass executions, persecutions of
13 individuals of communities on the basis of their religion,
14 nationality, or ethnicity, kidnaping of civilians; forced
15 displacement of Shia Muslim communities and minorities;
16 killing and maiming of children, rape, and other forms of
17 sexual violence.

18 Using social media, this defendant professed his
19 support for the terrorist organizations and assisted their
20 recruitment efforts. Defendant made multiple attempts from
21 multiple cities to fly to Syria to join and to fight for ISIS.
22 American law enforcement prevented him from achieving his
23 goals.

24 This defendant has been in pretrial detention at the
25 Metropolitan Detention Center since September of 2015. As

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1 detailed in the pre-sentence investigation report and its
2 addenda, this defendant has been cited on at least 100
3 separate occasions for committing disciplinary infractions,
4 many of which involved acts of violence on his part.

5 Among other items, this defendant has repeatedly
6 been cited for refusing to obey orders; covering his cell
7 window unit; hitting the distress alarm button when no
8 emergency existed; refusing to attend disciplinary hearings,
9 refusing to stand for prison counts; being found in
10 unauthorized spaces during lockdowns; possessing dangerous
11 weapons, interfering with security devices; breaking
12 handcuffs, light fixtures, food slots, and other furniture in
13 his cell; fighting with other inmates; and violently
14 assaulting various Bureau of Prisons officials.

15 Most notably, this defendant violently assaulted a
16 federal officer at the MDC on July 13, 2018. The defendant
17 attacked the officer with a knife. The assault resulted in a
18 new prosecution, to which the defendant pled guilty, and for
19 which he will be separately sentenced in the proceeding
20 immediately following this one.

21 The United States Code sets the following sentencing
22 parameters for a violation of Count Two of the superseding
23 indictment, attempt to provide material support to a foreign
24 terrorist organization: A statutory maximum imprisonment term
25 of 15 years, a statutory maximum supervised release term of

1 life, a fine of up to \$250,000, and a mandatory special
2 assessment of \$100.

3 The United States Code sets the following sentencing
4 parameters for a violation of Count Three of the superseding
5 indictment, attempt to provide material support to a foreign
6 terrorist organization: A statutory maximum imprisonment term
7 of 20 years, a statutory maximum supervised release term of
8 life, a fine of up to \$250,000 and a mandatory special
9 assessment of \$100 per count.

10 The sentences imposed on these counts may run
11 consecutively.

12 This Court must also consider the sentencing
13 parameters set by the United States Sentencing Guidelines.
14 The applicable guidelines for violation of Title 18, United
15 States Code, Section 2339B(a)(1) is USSG Section 2M5.3(A),
16 which all parties agree provides a base offense level of 26.

17 The parties also agree that because the defendant
18 transported 1,196 grams of explosive powder in a concealed
19 compartment inside the trunk of his car during the instant
20 offense, two levels are added pursuant to USSG --

21 THE defendant: That's not true.

22 THE COURT: -- 2M5.3(b)(1)(C).

23 The parties also agree that because the offense is a
24 felony that involved or was intended to promote a federal
25 crime of terrorism, the offense level is increased by 12

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1 levels.

2 Furthermore, the Government and defense counsel
3 agree that the defendant's timely acceptance of his
4 responsibility pursuant to USSG Sections 3E1.1(a) through (b)
5 results in a three-level reduction. Probation does not credit
6 the defendant with this reduction because Probation groups the
7 offenses in dockets 15-CR-517 and 18-CR-468. Therefore, the
8 defendant's total offense level according to the Government
9 and defense counsel is 37. Defendant's total offense level
10 according to Probation is 40.

11 The parties agree the defendant has a Criminal
12 History Category of six. Defendant has no known prior
13 criminal conviction and his criminal history score is zero,
14 which normally establishes a criminal history category of one.
15 However, because the instant offense is a felony that
16 involved, or was intended to promote, a federal crime of
17 terrorism, defendant's Criminal History Category is a category
18 six.

19 A total offense level of 37 or 40, with a Criminal
20 History Category of six, yields a guidelines imprisonment
21 range of 360 months to life. However, because of the
22 statutory maximum sentence, the effective Guidelines range is
23 360 months to 420 months of imprisonment.

24 In addition, the guidelines further suggest a term
25 of supervised release of one year to life, a fine of between

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1 50,000 and \$500,000, and the defendant is ineligible for
2 Probation.

3 United States Probation Department recommends a
4 sentence of 15 years in custody on Count Two and 20 years of
5 custody on Count Three to run consecutively, 15 years of
6 supervised release to run consecutively on each count, and the
7 special conditions outlined in their sentencing
8 recommendation.

9 The Government recommends a guidelines sentence of
10 between 360 and 420 months and notes that the defendant also
11 consented to a life term of supervised release in the plea
12 agreement.

13 Defense counsel does not ask the Court for a
14 specific sentence in this case, but instead asks for a
15 sentence of not more than 300 months on both this indictment
16 and the indictment charged in Docket Number 18-CR-468, which
17 is also pending before this Court.

18 Counsel, am I missing anything pertinent to today's
19 proceeding from the Government?

20 MS. KOMATIREDDY: Not from the Government, Your
21 Honor.

22 THE COURT: Defense counsel?

23 MR. RICCO: No, sir.

24 THE COURT: Probation?

25 THE PROBATION OFFICER: No, Your Honor.

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1 THE COURT: Are there any other objections that
2 either counsel wishes to raise other than those that have been
3 submitted in writing to the Court?

4 From the Government?

5 MS. KOMATIREDDY: No, Your Honor.

6 THE COURT: Probation?

7 THE PROBATION OFFICER: No, Your Honor.

8 THE COURT: Defense counsel?

9 MR. RICCO: No, sir.

10 THE COURT: That being the case, I will now turn it
11 over to the defense.

12 MR. RICCO: Good morning, Your Honor.

13 The first thing I'd like to do, Your Honor, is note
14 present in court today is the family of Ali Saleh. I would
15 also like to note that his mother and father are present,
16 along with other relatives, and that they have been here on
17 virtually every appearance in connection with this case that
18 has gone on now more than six years. It's more than one case,
19 but over the course of the cases.

20 As Your Honor is aware, I was not the initial
21 counsel in this case. I think I came into this case maybe
22 about two years after Mr. Saleh was in custody and proceedings
23 had took place before Your Honor.

24 During the time period that I have represented Mr.
25 Saleh, we had many discussions about the case, about his life

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1 before he was arrested on the original charges, and about some
2 plans that he had for a future for himself. Those
3 conversations led us to a point where Mr. Saleh was prepared
4 and did take acceptance of responsibility for his conduct in
5 connection with this case.

6 Judge, long before I got involved in this case, Mr.
7 Saleh had been in the SHU for years. Every visit that I have
8 had with Mr. Saleh has been in the SHU. Every visit with Mr.
9 Saleh in the SHU has been cordial, pleasant, respectful and
10 without incident.

11 After Mr. Saleh -- just before Mr. Saleh entered a
12 plea in this case, of course we had the conduct that related
13 in the second indictment, the conduct was captured on
14 videotape, very serious conduct that Your Honor has alluded
15 to. Notwithstanding that conduct, Mr. Saleh came into court
16 on the 24th of July and entered a plea, took acceptance of
17 responsibility for his conduct.

18 Over the years, Your Honor, I have had the
19 opportunity to appear in this courthouse and in courthouses
20 across our country with individuals who are charged with
21 serious crimes of this nature, including the bombing of the
22 World Trade Center, the conspiracy to blow up the World Trade
23 Center.

24 Under the Criminal Justice Act, I have represented
25 individuals on death row, individuals who have been involved

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1 in serious and profound criminal conduct, and I have had the
2 opportunity to visit with inmates who have served for decades
3 in isolation on Range 13 at ADMAX and I have seen the effects
4 of long-term incarceration and isolation on human beings that
5 take place over decades of being isolated in penitentiaries.

6 My own observations are consistent with the findings
7 of the U.N. when the U.N. adopted what is known as the Nelson
8 Mandela rules which defines segregated conduct of more than 15
9 days is torture.

10 The State of New York, in 2011, passed into law an
11 act called the Human Alternatives to Long-Term Solitary
12 Confinement Act known as the HALT Solitary Confinement Act,
13 and under that act defendants are not allowed to be kept in
14 segregated housing for more than 15 consecutive days.

15 Those legislative findings by New York State, which
16 are far ahead of our Federal Government on this issue, and the
17 United Nations, which is far ahead of both New York State and
18 the Federal Government on this issue, findings are based on
19 studies done by the World Health Organization, scholars,
20 psychologists, who have interviewed thousands of men and women
21 who have served in solitary confinement. And what the experts
22 and scholars have said mirrors my own experience as a
23 professional that individuals who are in these circumstances
24 for more than 15 days consecutive begin to hallucinate, they
25 begin to have anxiety attacks, they begin to suffer from panic

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1 attacks, they suffer from deep paranoia, which results in a
2 loss of control and impulsive conduct.

3 The defendant in this case has been in the Special
4 Housing Unit, by my estimation, more than 2,190 days. The
5 concerns about the state of mind of a human being who is in
6 solitary confinement for more than 15 days dwarfs the
7 experiences of the defendant that is before the Court for
8 sentencing for his very serious conduct. These remarks are
9 not made, Your Honor, as an excuse for Mr. Saleh's conduct,
10 both the underlying conduct, but certainly his conduct in the
11 Bureau of Prisons.

12 The Bureau of Prisons cannot function unless the
13 inmates have respect for and follow the rules. And when they
14 don't, there has to be some type of consequence. What that
15 is, Your Honor, I'm not qualified to say. Nor am I qualified,
16 Your Honor, to speak on the psychological impact of long-term
17 incarceration in the special housing unit. That's not my area
18 of expertise. But those who are qualified talk about the
19 dangers to the human mind as a result of it.

20 I have looked closely, Your Honor, at the
21 disciplinary record here, and it is as woeful as Your Honor
22 has pointed out, and I think Your Honor might have missed one
23 or two. Everything is here. There are hundreds of
24 infractions dating back to 2015.

25 I think -- Mr. Bachrach, who is always on top of

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1 these things, reminds me that within two weeks of Mr. Saleh
2 being at the MDC, he was at the Special Housing Unit and he
3 has remained there pretty much since that time.

4 His first serious infractions involving assaults and
5 fighting take place in April of 2016, when he was there about
6 nine months. Before that time, you have the type of
7 violations that I think would not raise deep concerns, but
8 would raise concerns: The failure to obey orders, failure to
9 stand, disobeying, letting other inmates use his phone, PIN
10 number, things of that nature. After about nine months in
11 solitary confinement, we do begin to see the type of conduct
12 that is alarming.

13 Although the defendant's conduct over that time
14 period deteriorated, it never stopped myself or Michael
15 Bachrach or Steve Zissou from returning to the Court to try to
16 find the soul of a young man who is before the Court on quite
17 serious charges so that we could help him resolve these cases,
18 to accept responsibility for his conduct, and be in a position
19 where we can say something to the Court about him other than
20 what is set forth in the records, the BOP records and his
21 behavior in connection with the underlying offense.

22 So, Judge, that really comes down to this: Before
23 his involvement and recruitment by ISIS, he was a member of a
24 loving family that you see in the courtroom today. His father
25 is a hard-working man who came to this country and took full

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1 advantage of the opportunities that are available.

2 Ali Saleh is loved by his family, who are a family
3 of law-abiding people, who have no contact whatsoever with
4 criminal justice at all.

5 Before his involvement here, we are told by his
6 family that Ali Saleh was a very quiet young man, spent most
7 of his time to himself, did not have a lot of friends, but was
8 always pleasant and amicable with people. The parents feel
9 like they lost their son to the influence of other people and
10 they're heartbroken, as any parents would be, Your Honor,
11 because they recognize that Mr. Saleh has to be held
12 accountable for his conduct and they recognize that and they
13 respect that. They have very strong religious beliefs. They
14 have faith in God. They have faith in who they are as parents
15 and I know that they will continue to provide that type of
16 support for him.

17 Mr. Saleh may not like for me to say it, but at his
18 core, he is a young man. He is a young man who went astray.
19 He is a young man like many young men in this country who have
20 had their actions influenced by folks who are far more
21 powerful than them who seek out individuals to recruit for
22 their efforts.

23 Mr. Saleh has a very serious price to pay here, Your
24 Honor. There are a lot of people who would describe him as
25 difficult. I don't. Complicated, yes. Afraid, yes.

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1 Courageous, yes.

2 I would say that both Mr. Bachrach and Mr. Zissou
3 have certainly appreciated the fact that Your Honor has
4 allowed us to stay on the case and to work with Mr. Saleh. We
5 came into this case way into it and we recognized the
6 difficulties that were present and we -- the three of us
7 worked hard in tandem at times, oftentimes together, towards
8 seeing to it that Mr. Saleh, regardless of difficulties, had
9 the level of representation that this Court demands that he
10 has given all of the difficulties present. And I feel very
11 comfortable, Your Honor, that we have accomplished that.

12 Your Honor, that concludes my remarks.

13 And I would like to just, if I can, just adopt those
14 same remarks for the proceeding that is to follow.

15 And I thank you, Your Honor, for the opportunity to
16 speak on his behalf. And more importantly, I thank you for
17 the opportunity to represent him, because in our system, we
18 have to have lawyers who are prepared to go in even in the
19 most difficult cases and find that part of humanity that
20 exists in people who are charged before this Court. It allows
21 us to maintain the integrity of what we are all seeking to
22 accomplish in courts and I know it is something that I am and
23 my colleagues are proud of.

24 THE COURT: Thank you, counsel.

25 I will now hear from the assistant united states

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1 attorney.

2 MS. KOMATIREDDY: Thank you, Your Honor.

3 The most concerning thing about this defendant at
4 the time that he committed the charged offenses and even until
5 this day is that he is a true believer in ISIS and its violent
6 ideology, and its command, its directive to find the infidels
7 in whatever way that you can, wherever you are.

8 Counsel has suggested that Mr. Saleh's difficulties
9 are largely a result of solitary confinement that he has
10 experienced during his time at the MDC, but it is important to
11 point out a few things. It is true that Mr. Saleh was put in
12 the SHU shortly after he started his pretrial detention, and
13 that's because of his conduct, his desire to fight against the
14 system, that is the system of what he considers to be the
15 infidels. It was a disciplinary infraction on his part, in
16 particular, an attempt to circumvent the prison's monitoring
17 of jail calls by allowing someone else to use his telephone
18 privileges that resulted in that time --

19 THE defendant: He didn't have any money in his
20 account and I --

21 THE COURT: Be quiet. Be quiet. Continue, counsel.

22 MS. KOMATIREDDY: Thank you.

23 The problem is that it didn't stop there. Every
24 instant of the defendant being placed in the SHU was a
25 consequence for a rule or a violation on his part. And

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1 although counsel appropriately cites various studies and
2 concerns that are expressed by solitary confinement in
3 different incarceratory situations, none of that is specific
4 to this defendant.

5 Counsel talks about how some suffer hallucinations
6 or paranoia, but this Court has ordered evaluations of this
7 defendant over the years. And those evaluations state that
8 this defendant does not suffer from hallucinations or
9 paranoia.

10 It is interesting that defense counsel spends a
11 great portion of their sentencing submission seeming to try to
12 explain all of the defendant's conduct. As they say that the
13 only sensible explanation for the entirety of the defendant's
14 conduct in relation to the 2015 indictment, the 2018
15 indictment, and all institutional misconduct in between and
16 ever since is a result of his -- substantial impairments in
17 the defendant's decisionmaking ability brought about by
18 significant mental health impairments. In other words, the
19 defense asks this Court to assume that all of the defendant's
20 criminal conduct is the result of mental illness. But the law
21 does not support this presumption and the evidence in this
22 case shows otherwise.

23 It is very clear why the defendant does what he
24 does, because he believes in fighting the infidels. He took
25 ISIS's call to heart and that call was specific.

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1 In March of 2015, an ISIS recruiter told his
2 followers: If you can't make hijra, that is travel to the
3 Middle East, don't sit at home and give up; ignite a bomb,
4 stab a kafir -- that's a disbeliever -- or shoot a politician.
5 If you came here, you would be on the frontline fighting,
6 right? But you couldn't come here. So why not fight the
7 kafir over there. Your jihad is not over just because you got
8 stopped.

9 Those same sentiments are echoed by this defendant.
10 In the defendant's own Twitter feed, he posts I'm ready to die
11 for the caliphate. Prison is nothing.

12 You see, it became clear to this defendant, after he
13 attempted to travel himself, after he sent money in support of
14 ISIS and others traveling to support ISIS, after he did
15 everything he could on the outside, spreading instructions
16 about how to create improvised explosive devices and acquiring
17 explosive --

18 THE defendant: Molotov cocktails. Molotov
19 cocktails.

20 THE COURT: Be quiet or we will have to impose
21 conditions that secure you do not speak until the opportunity
22 is accorded to you in a few moments to speak. You will be
23 able to speak to the Court in a few minutes, sir, and to say
24 anything you deem appropriate, as I said earlier, as I'm sure
25 as your distinguished counsel is telling you now.

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1 So we will hear from the Government and then hear
2 from Probation and then, Mr. Saleh, we will hear from you.

3 As my children would have put it, chill out.

4 Go ahead, Counsel.

5 MS. KOMATIREDDY: Yes, Your Honor.

6 In short, Your Honor, everything we see from this
7 defendant, it is his jihad.

8 As soon as the law enforcement officers stopped him
9 from hurting others in the outside world, he turned his
10 energies to hurting others while in prison. That became
11 apparent from the very beginning.

12 At the time of his arrest, he asked the law
13 enforcement officers what took you so long?

14 During his post-arrest statement, he asked the law
15 enforcement officers to send him to prison, to send him to a
16 black site. It became clear in that conduct when he refused
17 to be fingerprinted during processing, when he refused to
18 speak to a magistrate judge during arraignment, when he
19 initiated a hunger strike shortly after entering the prison,
20 and ever since, when he assaulted correction officers, set
21 fires in prison, hit emergency alarms in order to cause chaos.
22 Every single one of those actions in support of ISIS's
23 directive to fight the infidels.

24 This is not mental illness; it is ideology. And the
25 most concerning thing is that this defendant continues to hold

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1 that ideology. This Court has seen other ISIS supporters and
2 sentenced other ISIS supporters, and has seen how in certain
3 instances, after intervention, an individual can renounce that
4 ideology and turn a corner. But this defendant has done the
5 opposite. He has double-downed and he has found every
6 possible means to fight and continued that fight, continued
7 his jihad.

8 Because this conduct requires retribution,
9 deterrence and incapacitation, the Government requests a
10 guidelines sentence.

11 THE COURT: Thank you, counsel.

12 Does Probation have a statement to make?

13 THE PROBATION OFFICER: No, Your Honor.

14 THE COURT: All right. Mr. Saleh, what, if
15 anything, would you like to say to this Court?

16 MR. RICCO: I'm sorry, Your Honor, he had a question
17 that I answered.

18 THE COURT: Mr. Saleh, what, if anything, would you
19 like to say to the Court? You don't have to. It is up to
20 you.

21 THE defendant: In the name of Allah, the most
22 merciful, the most kind --

23 (Defendant speaking foreign language.)

24 THE defendant: Indeed, all praises to Allah. We
25 praise Him and we seek His aid and forgiveness. Whomsoever

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1 Allah guides, no one can misguide. And we seek refuge in
2 Allah from the evil of ourselves and our evil deeds.
3 Whomsoever Allah guides, no one can misguide, and whomsoever
4 Allah misguides, no one can guide --

5 (Defendant speaking foreign language.)

6 THE defendant: All of you who believe --

7 (Defendant speaking foreign language.)

8 THE defendant: Fear Allah, as He should be feared --

9 (Defendant speaking foreign language.)

10 THE defendant: And do not die except in a state of
11 Islam submission. All mankind, fear your guardian Lord who
12 created you from one sole and from that sole, Adam, he created
13 its mates, Hawa, Eve. And from them both, he scattered many
14 men and woman --

15 (Defendant speaking foreign language.)

16 THE defendant: And fear Allah through whom you
17 demand your mutual rights and do not cut the ties of kinship.
18 Indeed, Allah is ever a watcher over you. Allah says --

19 (Defendant speaking foreign language.)

20 THE defendant: All of you who believe, fear Allah
21 and say a word that is right, that is just, that is firm.

22 (Defendant speaking foreign language.)

23 THE defendant: He will correct your affairs and
24 forgive you your sins --

25 (Defendant speaking foreign language.)

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1 THE defendant: And whoever obeys Allah in His
2 messenger, then indeed He has achieved a great achievement.

3 As to what follows, and, indeed, the best speech is
4 the book of Allah's Al Quran, and the best guidance is the
5 guidance of --

6 (Defendant speaking foreign language.)

7 THE defendant: Peace and blessing be upon Him in
8 the words of affairs are those newly invented matters for
9 every newly invented matter is an innovation and every
10 innovation is misguidance in religion and every misguidance
11 leads to the fire.

12 As to what follows, I wanted to respond to a
13 statement and I wanted to recite a chapter of the Koran by the
14 judge a couple years ago when he said that he was agnostic
15 when it came to the affairs of prison, and I didn't want to
16 respond to what happened in prison, but I just want to respond
17 to the word agnostic, and I wanted to recite a chapter so that
18 my family can hear as well --

19 (Defendant speaking foreign language.)

20 THE defendant: The most merciful --

21 (Defendant speaking foreign language.)

22 THE defendant: He taught the Koran. He created
23 mankind --

24 (Defendant speaking foreign language.)

25 THE defendant: He taught how to speak. He taught

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1 him the language --

2 (Defendant speaking foreign language.)

3 THE defendant: The son and the moon are all
4 accounted for --

5 (Defendant speaking foreign language.)

6 THE defendant: And the stars and the planets, they
7 prostate to Him, and the Heavens he raised --

8 (Defendant speaking foreign language.)

9 THE defendant: And he made just the balance --

10 (Defendant speaking foreign language.)

11 THE defendant: So do not transgress in the
12 balance --

13 (Defendant speaking foreign language.)

14 THE COURT: Mr. Ricco, would you agree that this
15 completes your client's statement to the Court?

16 MR. RICCO: I would, Your Honor.

17 THE COURT: Thank you, Mr. Saleh.

18 THE defendant: I wanted to finish up.

19 THE COURT: You're finished. I thank you.

20 MS. KOMATIREDDY: Your Honor?

21 THE COURT: Yes.

22 MS. KOMATIREDDY: May I just ask that the defendant
23 be advised should he wish any of his Arabic language remarks
24 to be considered by the Court that they should be repeated in
25 English.

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1 MR. RICCO: Your Honor, we know how to handle this.

2 THE COURT: I'm sorry?

3 MR. RICCO: I'm sorry. We don't need any guidance
4 from the Government as to how to handle this.

5 THE COURT: Speak into the microphone.

6 MR. RICCO: Yes. We don't need the guidance from
7 the Government how to handle this. We will advise the
8 defendant. And we will try our best to get to the court
9 reporter those sections of the Koran that he was referring to.
10 Most of it, Your Honor, is Chapter 55, and we will do our best
11 to make sure that the Court has an accurate record of it.

12 THE COURT: Inshallah.

13 MR. RICCO: Inshallah. Thank you.

14 THE COURT: The Court may have understood a lot more
15 than some people might think the Court understood.

16 All right. Thank you, Mr. Saleh.

17 The Court has this to say:

18 Perfect justice in this case would involve a power
19 that neither I nor any judge nor any human being, for that
20 matter, has in his or her hands. It is challenging and
21 humbling to sit here as the Court and to pass sentence on a
22 fellow human being.

23 This case impacts your family, who are here today in
24 support, and the Court acknowledges them and blesses them for
25 their support throughout. And the Court acknowledges the

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1 efforts that the family made prior to 2015 to prevent many of
2 the actions that occurred, including taking steps to secure
3 the passport to prevent the defendant from leaving the country
4 and perhaps, by taking those steps, saved his life.

5 I do not want you to think that I have not seen
6 every step that the men and women, family members took to
7 protect Mr. Saleh went unnoticed or unappreciated. You are
8 the reason he is still alive. God has blessed you, your
9 family, and the steps that you have taken to keep him alive
10 and to protect him and all citizens throughout the world, not
11 just in this country, but throughout the world, from the evils
12 of ISIS. You are to be commended for that. You are to be
13 commended for that.

14 We are all limited human actors. And in my faith
15 division, we are all sinners. I get that. We all get that.
16 And you are to be commended for your steps.

17 But, ultimately, although this case impacts your
18 family and this case impacts the victims of your crimes and
19 the intended victims of your crimes, ultimately this case is
20 about you. This case is about what you did that brought us
21 here today, which is a day of sadness and a day of tragedy.

22 We will, of course, have the entirety of your
23 comments, Mr. Saleh, translated and made a part of the record
24 of this proceeding. And you should be comforted in knowing
25 that, and your family should be comforted in knowing that as

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1 well.

2 I'm going to read the Memorandum and Order in this
3 case which details the history of this case, both the law and
4 the facts, and then we're going to briefly adjourn this
5 proceeding. We will have another court reporter come in and
6 we will do the second proceeding.

7 On July 24th of 2018, the defendant, Mr. Ali Saleh,
8 pled guilty pursuant to a written plea agreement to two counts
9 of attempting to provide material support to a foreign
10 terrorist organization in violation of Title 18 of the United
11 States Code Section 2339B(a)(1). The Court hereby sentences
12 this defendant and sets forth its reasons for the defendant's
13 sentence using the mandatory rubric of 18 U.S.C. Section
14 3553(a) factors pursuant to 18 U.S.C. Section 3553(c)(2).

15 And I want all counsel and all parties present to
16 know that I will be filing this Memorandum and Order in its
17 entirety on ECF at the end of these proceedings today. So
18 feel free to take notes, but you will have the entirety of
19 this Memorandum and Order. But I'm going to read it so that
20 all of the people here today, including the defendant, hear it
21 in realtime.

22 The legal standard of 18 U.S.C. Section 3553
23 outlines the procedures for imposing sentence in a criminal
24 case. The starting point and the initial benchmark in
25 evaluating a criminal sentence is the guidelines sentencing

1 range pursuant to *Gall versus United States*, 552 U.S. 38, at
2 page 49, decided in 2007. If and when a district court
3 chooses to impose a sentence outside a Sentencing Guidelines
4 range, the Court shall state in open court the reasons for its
5 imposition of the particular sentence and the specific reason
6 for the imposition of a sentence different from that described
7 in the guidelines. The Court must also state with specificity
8 its reasons for so departing or varying in a statement of
9 reasons form.

10 The sentencing court's written statements of reasons
11 shall be simple, fact-specific statement explaining why the
12 guideline range did not account for a specific factor or
13 factors under Section 3553(a) pursuant to the decision of my
14 late esteemed dear colleague Jack Weinstein, *United States*
15 *versus Davis*, 08-CR-0332, 2010 Westlaw 1221709 at star 1
16 decided here in the Eastern District on March 29 of 2010.

17 Section 3553(a) provides seven factors for the Court
18 to consider in determining what sentence to impose on a
19 criminal defendant and the Court now addresses each in turn,
20 beginning with the nature and circumstances of the offense and
21 the history and characteristics of the defendant.

22 The first 3553(a) factor requires this Court to
23 evaluate the nature and circumstances of the offense and the
24 history and characteristics of the defendant.

25 The defendant was born on December 18 of 1992 in

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1 Queens, New York. He is one of four children born to the
2 marriage of Mr. Saleh Musa and Ms. Fatimah Musa. The
3 defendant's father owns a grocery store and works as a
4 security guard for a company that delivers money to automatic
5 teller machines. His mother is a homemaker. The defendant
6 has good relations with his parents and they remain supportive
7 of him throughout the incarceration and despite the
8 incarceration of the instant offense and the Court appreciates
9 that support.

10 In telephonic interviews, the defendant's parents
11 have described him as a good kid and expressed a profound
12 sense of sadness over his legal situation, a sentence that the
13 Court shares. The defendant's siblings are also aware of the
14 instant offense and remain supportive.

15 The defendant described growing up in a home with
16 basic necessities, free from any instance of abuse or neglect.
17 He graduated from Hillcrest High School in Queens in 2010,
18 attended City College in New York in January 2011 through May
19 2011, when he was 21 years old, and he attended La Guardia
20 Community College from March of 2013 until June of 2014.

21 And prior to his incarceration, the defendant was
22 employed as a deli clerk in his father's grocery store and as
23 a cashier at his uncle's restaurant and was otherwise
24 supported by his parents in a nurturing and supportive way.
25 Between December 2014 and July of 2015, the defendant lived

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1 with his uncle in Fort Wayne, Indiana. And prior to his
2 arrest in the case, the defendant lived with his parents in
3 Queens, New York.

4 The defendant is single, has never been married, has
5 no children.

6 The defendant is generally in good physical health,
7 other than minor problems, including a vitamin deficiency and
8 low blood pressure. During his incarceration for the instant
9 offense, he has been treated in connection with a hunger
10 strike and has been taken to the hospital for a drug overdose
11 that was deemed accidental and/or unintentional.

12 The defendant has undergone comprehensive
13 psychological evaluation since his arrest, as we've heard
14 today from his counsel and the Government. The results of
15 these evaluations have been inconclusive in determining the
16 defendant's specific mental health issues. Defense counsel
17 argues the defendant's offense resulted from substantial
18 impairments in Mr. Saleh's decisionmaking ability brought
19 about by significant mental health impairments. That's set
20 forth in the defendant's sentencing memorandum at 8, ECF No.
21 157, paragraphs 84 through 90. The defendant has declined
22 psychological services while in prison according to the PSR in
23 paragraph 84.

24 In approximately 2013, the defendant became
25 interested in the conflict in Syria, specifically in ISIS. At

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1 the time of the defendant's offense conduct, ISIS was pursuing
2 the objective of establishing an Islamic state or caliphate
3 based in the Middle East. As stated earlier, ISIS is widely
4 recognized as one of the preeminent threats in the world
5 today, responsible for more deaths than any terrorist
6 organization or extremist group over the past several years.
7 ISIS routinely carried out killings; deliberately targeting
8 civilians; mass executions; persecution of individuals of
9 communities on the basis of their religion, nationality, or
10 ethnicity; kidnaping of civilians; forced displacement of Shia
11 Muslim communities and minorities; killing and maiming
12 children; rape; and other forms of sexual violence. The
13 defendant swore an oath of allegiance to ISIS and decided to
14 travel to the Middle East in support of ISIS.

15 The defendant espoused his support for ISIS through
16 multiple public online forums. He had at least nine Twitter
17 accounts, as well accounts on Facebook, Kik, and Telegram,
18 and over the course of one year, he posted and reposted
19 hundreds of messages glorifying ISIS, promoting violent jihad,
20 spreading ISIS propaganda, supporting ISIS objectives. During
21 this time, one of the photographs associated with defendant's
22 Twitter account was a photograph known to be an ISIS
23 recruitment billboard in Iraq.

24 The defendant made efforts to facilitate others in
25 support of ISIS. Through his social media accounts, he held

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1 himself out to be someone who would assist others who wanted
2 to make "hijra," travel, and join ISIS in the Middle East.
3 Defendant chose Twitter usernames that included hijra_sponsor
4 and sponsormujahid; translated: Travel sponsor and sponsor a
5 fighter. When other ISIS supporters contacted the defendant
6 on Twitter with his assistance to travel to ISIS-controlled
7 territories, he provided them with contact information for
8 ISIS facilitators who could help or redirect them to contact
9 him using encrypted-messaging services.

10 With respect to his attempts to travel to the Middle
11 East in support of ISIS fighters, the record is replete.

12 The defendant was arrested after repeatedly
13 attempting to travel to the Middle East to become a foreign
14 fighter for ISIS. He first attempted to join ISIS in August,
15 August 28th of 2014, when he made an airline reservation from
16 New York to Turkey, the country bordering on Syria.

17 After that failed attempt, the defendant ordered a
18 fire starter knife and folding knife from Amazon, as well a
19 book title, "Messages to the World: Statements of Osama Bin
20 Laden." On twitter, he retweeted, "Do not ask for anyone's
21 advice and do not seek anyone's verdict. Kill the disbeliever
22 whether he is civilian or military," and tweeted, "Get close
23 to the real kuffar and assassinate them."

24 On October 2014, the defendant communicated with an
25 ISIS supporter in Mali through an online messaging platform

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1 and sent a wire transfer in the amount of \$500 to fund that
2 person's travel to Syria. During the same time period, the
3 defendant communicated with other individuals to facilitate
4 their support of ISIS, including known ISIS supporters in the
5 United Kingdom and Australia.

6 In July of 2015, the defendant purchased fireworks
7 containing 1,196 grams of low-explosive powder, hid them in a
8 concealed compartment in the trunk of his car and drove them
9 from Indiana towards New York City. On Defendant's phone, law
10 enforcement agents discovered instructions regarding how to
11 create a bomb using explosive powder from fireworks. The
12 fireworks the defendant possessed was sufficient to create
13 multiple soda can grenades analogous to the one depicted in
14 the instructions and in online posts by the defendant. They
15 were also sufficient to create pressure-cooker bombs described
16 in the instructions. As the defendant drove toward New York
17 City with those explosive materials in his trunk, his car
18 broke down and he was forced to have it towed. In addition to
19 the fireworks, law enforcement officers found a tactical knife
20 located inside the car.

21 In 2015, the defendant rededicated his efforts to
22 join ISIS overseas. He made at least five separate attempts
23 over 10 days to travel to the Middle East to fight ISIS.

24 On July 24, 2015, he contacted an ISIS facilitator
25 in Lebanon who had instructed followers to contact him on the

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1 encrypted platforms for Kik and Telegram for hijra, travel
2 advice, to IS in Libya only. The defendant then made a same
3 day one-way booking to travel on Qatar Airways from New York
4 JFK to Doha, Qatar, then on to Cairo, Egypt. Notably, Egypt
5 and Libya are bordering countries and it was relatively common
6 at the time for individuals to travel to Egypt to Libya to
7 join ISIS. When the defendant attempted to pay for the flight
8 at the JFK ticket counter, he was declined. Later that
9 evening, the defendant attempted to buy tickets to Egypt at
10 Newark Liberty International Airport in Newark, New Jersey, but
11 was also declined.

12 On July 26th of 2015, the defendant reserved a
13 flight itinerary for a same day one-way departure on Qatar
14 Airways from Philadelphia International to Cairo, Egypt. When
15 the defendant attempted to obtain a boarding pass, he was
16 denied. The next day the defendant went to Indianapolis
17 International Airport in Indiana, and appeared to again
18 inquire into flights. He left the airport without making any
19 reservations.

20 Finally, on August 2nd of 2015, the defendant went
21 to Amtrak train station in Cleveland, Ohio and attempted to
22 take a train Toronto, Canada, where he intended to fly from
23 Toronto to Yemen. After law enforcement intervention, he did
24 not board the train to Toronto and instead returned to New
25 York City.

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1 On September 17th of 2015, law enforcement agents
2 arrested the defendant at his home. During a search of his
3 home, the agents recovered paper copies of an itinerary and a
4 Turkish visa issued in the defendant's name for his September
5 2014 attempt to travel and the duffle bag containing
6 flashlights, headlamps, and other survival gear. Agents also
7 recovered a black trunk containing 29 machetes near the
8 defendant's sleeping area. The defendant acknowledged his
9 Miranda rights but was generally uncooperative in his
10 post-arrest interview.

11 The defendant has been in detention at the MDC since
12 September of 2015. And as detailed in the pre-sentence
13 report, the defendant has been cited on at least 100 separate
14 occasions for committing disciplinary infractions, many of
15 which involved acts of violence.

16 In October of 2015, the defendant was cited for
17 giving and accepting money without authorization because his
18 personal identification number was used by another inmate to
19 place calls, removing handcuffs from his left hand and
20 slipping out of his waist chain and attempting to conceal the
21 restraints by covering his arms with a blanket and refusing to
22 consent to a visual search.

23 In November of 2015, the defendant was cited for
24 refusing to consent to a visual search and refusing to appear
25 at his disciplinary hearing; being unsanitary and untidy and

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1 refusing to obey an order for refusing to comment during his
2 disciplinary hearing; being disruptive and barricading his
3 cell window with his mattress in order to obstruct the view of
4 his cell from the staff, disobeying the staff when they asked
5 him to remove the obstruction; and hitting the distress alarm
6 button and jamming the alarm button in the Special Housing
7 Unit, the so-called SHU, which you have heard about today.

8 In December of 2015, the defendant was cited for
9 multiple instances of refusing to attend his disciplinary
10 hearings and refusing to be searched in the SHU.

11 In June of 2016, the defendant was cited for failing
12 to stand for a prison count and refusing to obey an order to
13 do so, refusing to obey an order because he was found in a
14 common area with a sweatshirt and a sheet wrapped around him;
15 being in an unauthorized area during a lockdown drill;
16 refusing to remove sheets of paper from his cell window;
17 blocking his cell window and cell slot with paper in order to
18 obstruct the view from staff; refusing to remove the paper
19 when ordered to do so, not complying when asked to submit to
20 restraints; and activating the SHU distress alarm multiple
21 times when there was, in fact, no emergency.

22 On one occasion BOP staff found the defendant's food
23 slot opened. As the BOP officer began to secure the food
24 slot, the defendant charged the food slot from the back of his
25 cell which resulted in the bar smashing into the officer's

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1 knee multiple times. When the defendant was ordered to stop
2 movement, he refused to do so. Several months later, as BOP
3 staff were attempting to photograph the cell, the defendant
4 kicked the BOP officer in his mid-section, which resulted in
5 redness and swelling of his torso.

6 In July and August of 2016, the defendant was cited
7 for refusing to attend his disciplinary hearing multiple
8 times; covering his cell window in SHU, refusing to remove the
9 covering and jamming the food slot with a plastic bag;
10 covering his cell window in the SHU again; activating the
11 duress alarm repeatedly and kicking a BOP officer in the upper
12 torso during a pat-down search.

13 In September of 2016, the defendant was cited for
14 covering his cell window in the SHU; refusing to attend
15 disciplinary hearings multiple times; breaking food slots
16 multiple times; refusing to stop pulling on a light fixture
17 while standing on the top bunk and attempting to kick BOP
18 officers when they removed him and placed him against the
19 wall; destroying property valued at \$100 or less for ripping
20 the plastic cover of his mattress.

21 In October 2016, the defendant was cited for
22 fighting with another inmate, refusing to remove a covering
23 from his cell window; refusing to attend a disciplinary
24 hearing for destroying the light fixture in his room and
25 removing a metal desk from the wall in his SHU.

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1 Additionally, the defendant was cited for banging on
2 his cell window with a small stool seat that he had broken off
3 from his cell table, damaging the food port block on his cell
4 door and shattering the glass window. The defendant, still
5 holding the stool seat, told officers "I'm going to hit
6 whoever comes in here with this." He continued to be
7 combative and threatened to kick officials as they tried to
8 subdue him in the MDC.

9 In December of 2016 and January 2017, the defendant
10 was cited for refusing to remove paper covers from his cell
11 windows in the SHU multiple times; refusing to attend
12 disciplinary hearing multiple times, possessing a dangerous
13 weapon, i.e., a broken piece of his plastic food tray in his
14 hand; placing of his arm inside the food slot at the SHU and
15 fighting with another person.

16 In April of 2017, the defendant was cited for
17 attempting to grab the duty belt of the officer through a food
18 slot in his Special Housing Unit cell; refusing to be placed
19 in restraints multiple times and kicking an officer in the
20 thigh and hitting him in the back of his head during a routine
21 pat-down search.

22 In June and August of 2017, the defendant was cited
23 for assaulting someone without serious injury multiple times;
24 destroying property valued at over \$100 multiple times;
25 refusing to obey an order, possessing a dangerous weapon;

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1 fighting with another person.

2 In September and October of 2017, the defendant was
3 cited for refusing to obey on order; assault multiple times
4 with and without serious injury, interfering with taking
5 count; setting a fire and possessing a dangerous weapon.

6 In November 2017, the defendant was cited for
7 destroying property and refusing to appear for his
8 disciplinary hearing. The defendant was also cited for
9 possession of a dangerous weapon, destroying Government
10 property, tampering with security devices, covering his cell
11 window in the Special Housing Unit. BOP staff also observed
12 him banging and kicking on the door repeatedly. When he
13 uncovered the window, he was in possession of a large metal
14 object from the light fixture which he used to bang on the
15 door. The defendant was thereafter placed in restraints and
16 removed from his cell. Upon inspection of his cell, BOP
17 security officers observed that there were screws from light
18 fixture and the light bulb removed and his desk attached to
19 the wall was damaged.

20 In December 2017 and January 2018, defendant was
21 cited for interfering with taking count; refusing to appear at
22 disciplinary hearings; destroying property; and assaulting
23 someone without serious injury.

24 In March of 2018, the defendant was cited for
25 assault without serious injury multiple times. On one

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1 occasion, the defendant through an unknown substance through
2 an open food slot in the Special Housing Unit. He thereafter
3 refused to close the food slot stating "I want my sheet, I
4 want my sheet." On another occasion staff observed the
5 defendant attempting to destroy the ceiling tiles. Staff
6 attempted to remove the defendant to another cell. He became
7 combative, struck an officer in the head and torso with his
8 closed fist. He then refused to appear at his disciplinary
9 hearing. Defendant was also cited for refusing a drug/alcohol
10 test.

11 On April 24, 2018, the defendant was cited for
12 possessing a dangerous weapon and assault without serious
13 injury. According to the BOP disciplinary hearing report, an
14 inmate was observed with superficial lacerations on the left
15 forearm that were consistent with being cut with a sharp
16 object. While investigating this incident, BOP staff
17 discovered the defendant had recently gone through a metal
18 detector, which revealed a two-inch piece of aluminum metal
19 located on his person, and it was determined that he used this
20 metal object to assault the other inmate. The defendant then
21 refused to appear at the disciplinary hearing.

22 On July 13, 2018, the defendant was cited for
23 possessing a dangerous weapon and assaulting a BOP officer
24 with a knife. This was the incident for which the defendant
25 was indicted in docket 18-CR-468, which we will consider

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1 immediately after this proceeding.

2 In August, October, and November of 2018, the
3 defendant was cited for refusing to obey orders; destroying
4 property, and possessing a dangerous weapon.

5 In March and April of 2019, the defendant was cited
6 for interfering with security devices, destroying property and
7 possessing a dangerous weapon.

8 In May of 2019, the defendant was cited for
9 destroying property valued at \$100 or less when he bent his
10 handcuff and took it off.

11 In February, March, and May of 2020, the defendant
12 was cited for possessing a dangerous weapon.

13 In September, October, November, and December 2020,
14 defendant was cited for destroying property on multiple
15 occasions; possessing a dangerous weapon; assaulting without
16 serious injury; setting a fire; refusing to obey on order, and
17 interfering with taking count of inmates.

18 In January through May of this year, 2021, the
19 defendant has been cited for assaulting someone without
20 serious injury on multiple occasions; refusing to obey orders
21 multiple times; possessing dangerous weapon; interfering with
22 security devices on many occasions; refusing to obey orders,
23 and destroying property over \$100 in value.

24 The second 3553(a) factor addresses the Court to
25 consider the need for the sentence imposed to reflect the

1 seriousness of the offense, promote respect for the law, and
2 to provide just punishment for the offense; to afford adequate
3 deterrence to criminal conduct; to protect the public from
4 further crimes of the defendant; and to provide the defendant
5 with needed educational or vocational training, medical care,
6 or other correctional treatment in the most effective manner.

7 The Court's sentence recognizes the seriousness of
8 the defendant's offenses and punishes the defendant
9 accordingly. It seeks to deter the defendant from further
10 criminal activity, from disregarding United States law, and
11 from engaging in illicit activity.

12 The third 3553(a) factor requires the Court to
13 consider the kinds of sentence available with respect to this
14 defendant pursuant to 18 U.S.C. Section 3553(a)(3).

15 The defendant pled guilty, pursuant to the plea
16 agreement, to Counts Two and Three of the superseding
17 indictment, charging the defendant with attempt to provide
18 material support to a foreign terrorist organization violating
19 18 U.S.C. Section 2339B(a)(1).

20 For Count Two, the defendant faces a statutory
21 maximum imprisonment term of 15 years pursuant to 18 U.S.C.
22 2339B(a)(1).

23 For Count Three, the defendant faces the statutory
24 maximum prison term of 20 years pursuant to 18 U.S.C. Section
25 2339B(a)(1)(2015). On both Counts Two and Three, defendant

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1 faces a statutory maximum of life imprisonment, pursuant to 18
2 U.S.C. Section 3583(j), per count to be served concurrently; a
3 fine of up \$250,000 pursuant to 18 U.S.C. Section 3571(b), per
4 count; and a mandatory special assessment of \$100 pursuant to
5 18 U.S.C. Section 3013, per count.

6 The fourth 3553(a) factor requires the Court to
7 discuss the kinds of sentence and the sentencing range
8 established for the applicable category of offense committed
9 by the defendant as set forth in the guidelines.

10 Now, the parties disagree, as I previously noted, as
11 to whether the Defendant's total offense level in this case
12 comes to the competing counts.

13 One side says Docket Number 15-CR-517 should be
14 grouped with a total offense level in Docket Number 18-CR-468.
15 While the instant case concerns the Defendant's attempt to
16 join to support ISIS, Docket Number 18-CR-468 concerns his
17 assault of prison guard using a contraband knife.
18 Accordingly, the Court will, as proposed by the Government,
19 treat each case as a separate proceeding and sentence the
20 defendant separately in each case.

21 Despite Probation's grouping of the total offense
22 level in the pre-sentence investigation report and defense
23 counsel's request to consolidate the proceedings, as I have
24 stated, the Government notes that they do not have and they do
25 not consent to consolidate the proceedings. And I think the

1 record is clearer by doing them seriatim, as I've indicated
2 earlier and which I'm doing.

3 The purpose of the grouping rule as set forth in
4 Part 3D in the sentencing guidelines is to prevent multiple
5 punishments for substantially identical conduct. This is not
6 the case here. Accordingly, the Court proceeds to sentence
7 the defendant separately under each indictment.

8 The applicable guideline for a violation of 18
9 U.S.C. Section 2339B(a)(1) is USSG Section 2M5.3(a), which all
10 parties agree provides a base offense level of 26. The
11 parties also agree that because the defendant transported
12 1,196 grams of explosive powder in a concealed compartment in
13 the trunk of his car during the instant offense, two levels
14 are added.

15 The parties also agree that because the offense is a
16 felony that involved or was intended to promote a federal
17 crime of terrorism, the offense level is increased by 12.

18 Further, the Government and defense counsel agree
19 that the defendant's acceptance of responsibility results in a
20 three-level reduction. Probation, however, groups the
21 offenses in this case and 18-CR-468. They do not credit the
22 defendant with this reduction because after his arrest, he has
23 continued to commit crimes and infractions in prison under
24 their view. Therefore, the defendant's total offense level
25 according to the Government and the defense is 37. The

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1 defendant's total offense level according to Probation would
2 be 40.

3 The parties agree the defendant has a Criminal
4 History Category of six. Because the defendant has, as I
5 previously stated, no known prior criminal conviction, his
6 criminal history category score is zero, which generally
7 establishes a Criminal History Category of One. However,
8 because the instant offense is a felony that involves or was
9 intended to promote a federal crime of terrorism, the
10 defendant's criminal history category is automatically a
11 category six, pursuant to USSG Section 3A1.4(b).

12 A total offense level of 37 or 40, with a Criminal
13 History Category of six, yields a guidelines imprisonment
14 range of 360 months to life. However, because of the
15 statutory maximum sentence, the effective Guidelines range is
16 360 to 420 months of imprisonment. Additionally, the
17 Guidelines range further suggests a term of supervised release
18 of one year to life; a fine of between 50,000 and \$500,000,
19 and notes the defendant is ineligible for Probation.

20 The U.S. Probation Department recommends a sentence
21 of 15 years of custody on Count Two, 20 years of custody on
22 Count Three to run consecutively; 15 years of supervised
23 release to run concurrently on each count, and the special
24 conditions outlined in their sentencing recommendation.

25 The Government recommends a guidelines sentencing

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1 range of between 360 and 420 months and notes the defendant
2 consented to the imposition of a term of lifetime supervised
3 release in the plea agreement.

4 Defense counsel has not asked the Court for a
5 specific sentence, as I noted earlier, but instead asks for a
6 sentence of not more than 300 months on both this indictment
7 and the indictment brought under 18-CR-468.

8 The Fifth 3553 factor requires this Court to
9 evaluate any pertinent policy statement issued by the
10 Sentencing Commission. The Sentencing Commission outlines
11 grounds for departures from a Guidelines sentence in some
12 circumstances. Defense counsel argues a downward departure
13 from the Guidelines is warranted in this case for three
14 reasons: First, Mr. Saleh has significant mental health
15 issues, which would be better served by psychiatric treatment
16 rather than prolonged incarceration or isolation.

17 Second, Mr. Saleh's condition and his conduct have
18 been far from stellar, they acknowledge, but they state it is
19 likely the result of detaining the defendant, who has
20 significant mental health issues, in their view, in the MDC
21 Special Housing Unit, the SHU, often in isolation, as we've
22 heard for thousands of days.

23 And third, while the intent of Mr. Saleh's crimes,
24 they acknowledge, was odorous, his ability to succeed in
25 completing them was disorganized, confused, and disconcerted

1 because of his mental situation.

2 Now, the defendant further argues that 300 months or
3 25 years is a lengthy and substantial sentence and that
4 individuals charged with gang and organized crime-related
5 murders, including MS-13, the Bloods, the Crips, the Mafia,
6 often receives sentences in this District in the 20- to
7 25-year range, even when multiple murders are proven beyond a
8 reasonable doubt. The defense argues that the defendant's
9 institutional conduct reflect the conclusion that Mr. Saleh
10 possesses a Schizotypal Personality Disorder. That is the
11 statement of Dr. Xenakis, manifested by bizarre and odd
12 thinking, unusual and idiosyncratic interpretations of events
13 and situations, and episodic and overwhelming distress and
14 dysphoria. Defense counsel claims this condition was extended
15 and exacerbated by the defendant's placement in solitary
16 confinement.

17 Additionally, defense counsel argues the defendant
18 has been exposed to absolutely abhorrent conditions of
19 confinement during the past six years, including multiple
20 blackouts, flooding, mold in his cell, lack of heat, and most
21 recently, disruption of food services and deprivation of basic
22 sanitary conditions, such as cleaning supplies to the cells
23 despite COVID 19 raging alarmingly through the jails.

24 Defense counsel does not dispute the disciplinary
25 struggles Mr. Saleh has had while detained at the MDC, but

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1 states the treatment he has received cannot be justified by
2 anything he is alleged to have done. Moreover, defense
3 counsel calls attention to a recent incident in which the
4 defendant, upset at his prayer book being dropped, kicked the
5 officer standing behind him, an officer with whom defendant
6 had a history of negative verbal interactions.

7 Defense counsel states that the officer responded by
8 throwing Mr. Saleh against the metal door to his cell so hard
9 that he had to be transported to an outside hospital. Mr.
10 Saleh's injury included two puncture wounds to the skull,
11 measuring approximately one-half centimeter to one centimeter,
12 and substantial swelling of his face that impacted his ability
13 to eat and to speak. In light of these circumstances, defense
14 counsel argues a sentence of no more than 300 months
15 imprisonment in this proceeding should be imposed and the
16 proceeding in 18-CR-468 would be sufficient but not greater
17 than that to achieve the goals set forth in 18 U.S.C. 3553(a).

18 In contrast, Probation provides that, and seeks, an
19 upward departure may be necessary because of the defendant's
20 multiple violent assaults at the MDC and against its officers
21 while in custody, which he was not charged with in Docket
22 Number 18-CR-468. Probation states that his behavior
23 constitutes additional criminal activity for which the
24 defendant is not held accountable in the advisory guidelines
25 calculation, and may warrant an upward departure pursuant to

1 USSG Section 5K2.21.

2 Moreover, Probation notes that because of the
3 grouping rules, the additional conviction on the assault
4 charges resulted in no charge from the original advisory
5 guideline range. As a result, this range may not provide
6 ample and appropriate additional punishment for the assault
7 conduct. The Court may consider this as a basis for departure
8 if it wishes to do so pursuant to the background in the
9 commentary of USSG Section 3D1.4. Because the Court is
10 conducting separate sentencings, this factor is not relevant.

11 Next is the need to avoid unwarranted sentence
12 disparities. This is the sixth 3553(a) factor requiring the
13 Court to consider the need to avoid unwarranted sentence
14 disparities among defendants with similar records who are
15 found guilty of similar conduct, 18 U.S.C. Section 3553(a)(6).
16 For the reasons stated in this Memoranda and Order and
17 considering the other six 3553(a) factors, the Court's
18 sentence in this case avoids unwarranted sentence disparities.

19 The final and seventh 3553(a) factor requires this
20 Court to touch upon the need to provide restitution to any
21 victims of the offense. In the Court's view, this factor 18
22 U.S.C. 3557(a)(7), is not relevant to this case.

23 Therefore, given the nature of the offense and the
24 circumstances, the Court imposes a sentence of 360 months of
25 incarceration, which is the bottom of the Guidelines range,

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1 and lifetime supervised release, which was agreed to in the
2 plea agreement, and find that this is sufficient but not
3 greater than that necessary to comply with the purposes set
4 forth in 18 U.S.C. Section 3553(a).

5 Ordinarily, there would be a fine imposed of between
6 5,000 and 500,000. It's optional.

7 Probation reports the defendant appears unable to
8 pay such a fine. The Court agrees. So no fine is being
9 imposed.

10 The defendant shall pay the mandatory assessment of
11 \$100 per count, which I am required to impose in all cases.
12 The Court hereby adopts the factual findings of the
13 pre-sentence investigation report and its addenda, barring any
14 errors contained therein and to the extent they are not
15 inconsistent with the Court's sentencing.

16 The Court also adopts the special conditions
17 recommended by the Probation Department. The Court will now
18 read those special conditions out loud into the record so
19 there is no confusion about what they are.

20 The defendant shall participate in an education or
21 vocational training program as selected by the Probation
22 Department.

23 The defendant shall participate in a mental health
24 treatment program as approved by the Probation Department.
25 The defendant shall contribute to the cost of such services

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1 rendered and/or any psychotropic medications prescribed to the
2 degree he is reasonably able to do so and shall cooperate in
3 securing any applicable third-party payment. The defendant
4 shall disclose all financial information and documents to the
5 Probation Department and assess his ability to pay.

6 The defendant shall comply with the medication
7 regime prescribed by a licensed psychiatrist approved by the
8 Probation Department. The defendant shall contribute to the
9 cost of such services rendered and any psychotropic
10 medications prescribed by a co-payment or full payment in an
11 amount to be determined by the Probation Department based upon
12 the defendant's ability to pay and/or the availability of
13 third-party payment.

14 The defendant shall not associate in person, through
15 mail, electronic mail, the internet, social media, telephone,
16 or any other means with any individual with an affiliation to
17 any organized crime groups, gangs or any other criminal
18 enterprise; nor shall the defendant frequent any
19 establishment, or other locale where these groups may meet
20 pursuant, but not limited to, a prohibition list provided by
21 the Probation Department.

22 The defendant shall participate in a polygraph
23 examination to obtain information necessary for risk
24 management and correctional treatment.

25 The defendant shall cooperate with the United States

1 Probation Department's computer and internet monitoring
2 program. Cooperation shall include, but not be limited to,
3 identifying computer systems, internet capable devices, and/or
4 similar electronic devices the defendant has access to, and
5 allowing the installation of monitoring software/hardware on
6 said devices, at the defendant's expense. The defendant may
7 be limited to possessing only one personal internet capable
8 device to facilitate the Probation Department's ability to
9 effectively monitor his internet-related activities.

10 The defendant shall also permit random examinations
11 of said computer systems, internet capable devices, and
12 similar electronic devices, and related computer peripherals,
13 including CD's under his control.

14 The defendant shall report to the Probation
15 Department any and all electronic communications service
16 accounts as defined in 18 U.S.C. 2510(15) used for user
17 communications, dissemination and/or storage of digital media
18 files, i.e., audio, video images. This includes, but is not
19 limited to, e-mail accounts, social media accounts, and cloud
20 storage accounts. The defendant shall provide each account
21 identifier and password and shall report the creation of new
22 accounts, changes in identifiers and/or passwords, transfer,
23 suspension and/or deletion of any account within five days of
24 such action. Failure to provide accurate account information
25 may be grounds for revocation of release. The defendant shall

1 permit the Probation Department to access and search any
2 accounts using the defendant's credentials pursuant to this
3 condition only when reasonable suspicion exists that the
4 defendant has violated a condition of his supervised release
5 and that the accounts to be searched contain evidence of this
6 violation. Failure to submit to such search may be grounds
7 for revocation of release.

8 A search condition: The defendant shall submit his
9 person, property, house, residence, vehicle, papers,
10 computers, as defined in 18 U.S.C. Section 1030 (e)(1), other
11 electronic communications or data storage devices or media, or
12 office, to a search condition by a United States Probation
13 Officer. Failure to submit to a search may be grounds for
14 revocation of release. The defendant shall warn any other
15 occupant that the premises may be subjected to searches
16 pursuant to this condition. An officer may conduct a search
17 pursuant to this condition only when reasonable suspicion
18 exists that the defendant has violated a condition of his
19 supervision and that the areas to be searched contain evidence
20 of this violation. Any search must be conducted at a
21 reasonable time and in a reasonable manner.

22 Now, is there anything else that either counsel
23 would like to discuss or any charges that need to be
24 dismissed, beginning with the Government, Probation, and then
25 we will hear from defense counsel?

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1 MS. KOMATIREDDY: Yes, Your Honor. Thank you.

2 I apologize. Your Honor imposed a sentence of 360
3 months, but I missed the allocution of that sentence as to
4 each of Counts Two and Three.

5 THE COURT: What are you asking, Counsel?

6 MS. KOMATIREDDY: What is the sentence as to each
7 count, Your Honor?

8 THE COURT: What do you recommend, counsel?

9 MS. KOMATIREDDY: Your Honor, I would recommend 15
10 years as to Count Two and 15 years as to Count Three to run
11 consecutively.

12 THE COURT: So ordered.

13 MS. KOMATIREDDY: Thank you.

14 And, otherwise, the Government moves to dismiss the
15 remaining count of the superseding indictment, as well we move
16 to dismiss the underlying indictment in this case.

17 THE COURT: Any objection?

18 MR. RICCO: No, sir.

19 THE COURT: The motion is granted.

20 Anything else from the Government?

21 MS. KOMATIREDDY: I'm sorry, may I just confer with
22 counsel?

23 THE COURT: You may.

24 MS. KOMATIREDDY: Lastly, Your Honor, I believe a
25 \$200 special assessment applies.

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1 THE COURT: As I said, \$100 per count. There are
2 two counts. That comes to \$200 under my high math. That is
3 about as high I can go with the math.

4 Do you agree with that?

5 MS. KOMATIREDDY: I do. My rudimentary math
6 concurs, Your Honor.

7 THE COURT: Okay. Anything else from the
8 Government?

9 MS. KOMATIREDDY: No, Your Honor.

10 THE COURT: Anything else from Probation?

11 THE PROBATION OFFICER: No, Your Honor.

12 THE COURT: Let me hear from defense counsel.

13 MR. RICCO: Your Honor, nothing further. A very
14 thorough sentencing proceeding.

15 I would ask --

16 THE COURT: I appreciate that. I'm going to submit,
17 as I said, after we finish this proceeding and we adjourn to
18 the next proceeding, at the end of the day, I will put that
19 Memorandum and Order on ECF so that you have it in its
20 entirety. It is obviously read for the benefit of the
21 defendant, the public, the prosecution, defense, and everyone
22 here to know the details of what goes into this sentence. And
23 you will have that Memorandum and Order to be available to
24 everyone by the end of the day, as I stated. So that will be
25 clear. I think it is important and in basic fairness to

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1 everyone that you see it and see the analysis.

2 MR. RICCO: I agree, Your Honor.

3 And the other thing I would request, and it is just
4 a request, that the Court recommend in the judgment of the
5 Bureau of Prisons, if it is possible, For the defendant to be
6 able to serve his sentence in the Metropolitan area.

7 It's a very long sentence, Your Honor. I've seen
8 the impact of long-term incarcerations on defendants who are
9 separated from their family. Your Honor recognizes that there
10 is a strong relationship here. And if the Bureau of Prisons
11 can accommodate it for him to be housed near the Metropolitan
12 area, if possible.

13 THE COURT: Any objection to that request?

14 MS. KOMATIREDDY: No objection, Your Honor.

15 THE COURT: I'm going to put that in the order of
16 judgement, and I'm going to make that a very strong request to
17 the BOP. I think as counsel knows and as the public knows,
18 federal judges do not have power over the BOP, but we are
19 certainly going to make the recommendation.

20 I will note that last evening, in an unrelated
21 matter, the fact that the Federal Defenders and the U.S.
22 Attorney and the BOP, in an unrelated case, having nothing do
23 with this case, were directed by this Court to inspect a
24 particular situation with a particular defendant, and they
25 have actually now issued to my Chief Judge and the Chief

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1 Magistrate Judge a report dealing with their findings.

2 So, as I said, I have to stay in my lane as a judge,
3 and I do this on a case-by-case basis. But Federal Defenders,
4 the BOP, and the U.S. Attorney's Office are moving diligently
5 to try to address some of these conditions that everyone is
6 aware of.

7 I have said before and I will say it again and then
8 we will take -- we are going to have a different court
9 reporter come in for the next proceeding, because she has been
10 very kind to stay here and the other court reporter is in the
11 wings to come in for the next proceeding. We judge our
12 society by how we treat those in our custody. And I have said
13 this before, and I will say it again, no one is to be treated
14 disrespectfully in our system. I will not tolerate it as a
15 United States District Court Judge.

16 People ought to be treated respectfully in terms of
17 their person and in terms of their faith. Everything I can do
18 I do to try to ensure that. I can't run the BOP. I can't
19 even make our elevators always work here. But I can do this.
20 I can say it again and again and again. I've said it to my
21 judicial colleagues. I've said it to the Federal Defenders.
22 I've said it to the private bar. I have said it to the U.S.
23 attorneys.

24 This is real life. As my pastor says, this is not
25 a dress rehearsal; this is real life.

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1 I am not going to sit here and pretend that these
2 horrific conditions do not have an impact on everyone in the
3 system: The defendants, the guards, the marshals, the
4 lawyers, all of us.

5 This is our judicial system. We have to make it
6 better. That requires better behavior from the defendants and
7 the marshals and the CSO's, and the prosecutors and defense
8 counsel. Everyone. We are in this together. This is why I
9 took this job. This is why we invest this power and this
10 responsibility in Probation and Pretrial. This is what we do.

11 So we're now going to take a very brief break to
12 change court reporters and we are going to proceed to the next
13 proceeding. I am going to ask counsel if you can avoid
14 leaving -- to avoid leaving while we get this done.

15 MS. KOMATIREDDY: Your Honor, before we adjourn this
16 proceeding -- I apologize. I should have raised this earlier
17 -- if the Court could please advise the defendant that he has
18 a right to appeal.

19 THE COURT: The defendant has a right to appeal.

20 MR. RICCO: Thank you, Judge.

21 THE COURT: Anything else?

22 MS. KOMATIREDDY: No, Your Honor.

23 THE COURT: Anything else from Probation?

24 THE PROBATION OFFICER: No, Your Honor.

25 THE COURT: Anything else from defense counsel?

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1 MR. RICCO: No, sir. Thank you. We are going to
2 adjourn this proceeding. We're going to move in the new court
3 reporter. We are going to proceed right to the next
4 proceeding as I said we would.

5 MR. RICCO: Can the defendant have a couple of
6 minutes' break?

7 THE COURT: A comfort break. Is that acceptable to
8 everyone, including the marshals?

9 U.S. MARSHAL: Yes, sir.

10 THE COURT: Why don't you do that. We will take a
11 10-minute comfort break. I do mean men minutes. Everyone
12 behave.

13 (Matter adjourned.)
14

15 I certify that the foregoing is a correct transcript from the
16 record of proceedings in the above-entitled matter.

17 /s/ Michele D. Lucchese

December 20, 2021

18 _____
Michele D. Lucchese

DATE

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